SUPREME COURT OF THE UNITED STATES.

No. 154.—October Term, 1927.

John W. Blodgett, *vs.* Charles Holden, Collector of Internal Revenue.	On Certificate from the United States Circuit Court of Appeals for the Sixth Circuit.

[November 21, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Circuit Court of Appeals for the Sixth Circuit has certified three questions and asked instructions in respect of them. Title 28, Section 346, U. S. C. It is only necessary to answer the one which follows.

> Are the provisions of Sec. 319-324 of the Revenue Act of 1924, c. 234, 43 Stat. 313, unconstitutional insofar as they impose and levy a tax upon transfers of property by gifts *inter vivos*, not made in contemplation of death, and made prior to June 2, 1924, on which date the Act was approved, because the same is a direct tax and unapportioned, or because it takes property without due process, or for public use without just compensation, in violation of the Fifth Amendment?

The Revenue Act approved June 2, 1924, provides—

> Sec. 319. For the calendar year 1924 and each calendar year thereafter, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, and upon the transfer by a nonresident by gift during such calendar year of any property situated within the United States, whether made directly or indirectly: 1 per centum of the amount of the taxable gifts not in excess of $50,000; etc. . . .
>
> Sec. 320. If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. Where property is sold or exchanged for

less than a fair consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by section 319, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

Section 321 allows certain deductions—

[$50,000; donations for charitable purposes, etc.]

Section 322 is unimportant here.

Section 323. Any person who within the year 1924 or any calendar year thereafter makes any gift or gifts in excess of the deductions allowed by section 321 shall, on or before the 15th day of March, file with the collector a return under oath in duplicate, listing and setting forth therein all gifts and contributions made by him during such calendar year. . . .

Sec. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

Act of February 26, 1926, 44 Stat. 86, c. 27—

Sec. 324. (a) Section 319 of the Revenue Act of 1924 is amended to read as follows:

"Sec. 319. For the calendar year 1924 and the calendar year 1925, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, and upon the transfer by a nonresident by gift during such calendar year of any property situated within the United States, whether made directly or indirectly: 1 per centum of the amount of the gifts not in excess of $50,000. . . ." [Some of the succeeding percentages are less and some are higher than those specified by the Act of 1924.]

(b) Subdivision (a) of this section shall take effect as of June 2, 1924.

During the calendar year 1924, and prior to June 2, plaintiff Blodgett, a resident of the United States, transferred by gifts *inter vivos*, and not in contemplation of death, property valued at more

$850,000.00; after June 2 he made other gifts valued at
0.00. The collector exacted of him the tax prescribed by
ct of 1924, as amended, on such transfers and this suit seeks
ry of the sum so paid. The claim is that the Taxing Act,
licable in the circumstances stated, conflicts with the Fifth
dment.

the argument here counsel for Blodgett affirmed that all the
fers prior to June 2 were really made during the month of
ry; and the accuracy of this statement was not questioned.
the circumstances, we will treat this affirmation as if it were
f the recital of facts by the court below.

brief in behalf of the Collector sets out the legislative his-
f the gift tax provisions in the Revenue Act of 1924 and
that they were not presented for the consideration of Con-
prior to February 25 of that year. We must, therefore, de-
e whether Congress had power to impose a charge upon the
because of gifts fully consummated before such provisions
before it.

Nichols v. *Coolidge* (May 31, 1926) this Court pointed out
statute purporting to lay a tax may be so arbitrary and
ious that its enforcement would amount to deprivation of
rty without due process of law within the inhibition of the
Amendment. As to the gifts which Blodgett made during
ry, 1924, we think the challenged enactment is arbitrary and
at reason invalid. It seems wholly unreasonable that one
n entire good faith and without the slightest premonition
h consequence, made absolute disposition of his property
ts should thereafter be required to pay a charge for so doing.
ermination of the cause does not require us to consider other
ions to the Statute which have been advanced. And it is
essary to express an opinion concerning the validity of the
e as to transfers subsequent to June 2. Here, all such gifts
within the exemption granted.

far as the Revenue Act of 1924 undertakes to impose a tax
e of the gifts made during January, 1924, it is arbitrary and
l under the due process clause of the Fifth Amendment.
he question is so answered.

rue copy.

Test:

Clerk, Supreme Court, U. S.

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Mr. Justice Holmes.

Although research has shown and practice has established the futility of the charge that it was a usurpation when this Court undertook to declare an Act of Congress unconstitutional, I suppose that we all agree that to do so is the gravest and most delicate duty that this Court is called on to perform. Upon this among other considerations the rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act. Even to avoid a serious doubt the rule is the same. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407, 408. *United States* v. *Standard Brewery*, 251 U. S. 210, 220. *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, 217. *Bratton* v *Chandler*, 260 U. S. 110, 114. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 390. Words have been strained more than they need to be strained here in order to avoid that doubt. *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401, 402. In a different sphere but embodying the same general attitude as to construction, see *United States* v. *Goelet*, 232 U. S. 293, 297.

By § 319 of the Revenue Act of 1924, (June 2, 1924, c. 234; 43 Stat. 253, 313) a tax is laid on gifts 'For the calendar year 1924 and each calendar year thereafter'. In the Code the words are 'during any calendar year', Title 26, § 1131. The latter phrase brings out what I should think was obvious without its aid, that the purpose is a general one to indicate the periods to be regarded,

as distinguished from fiscal years, not necessarily to run counter to the usual understanding that statutes direct themselves to future not to past transactions. *Reynolds* v. *McArthur*, 2 Pet. 417, 434. *Shaub* v. *Doyle*, 258 U. S. 529, 534. *Lewellyn* v. *Frick*, 268 U. S. 238, 251, 252. If when the statute was passed it had been well recognized that Congress had no power to tax past gifts I think that we should have no trouble in reading the Act as meant to operate only from its date and only to tax gifts thereafter made. If I am right, we should read it in that way now. By § 324 (a) of the Revenue Act of 1926, (February 26, 1926, c. 27; 44 Stat. 9, 86,) § 319 of the Act of 1924 is amended and the rates of taxation are reduced, and then by (b) it is provided that 'subdivision (a) of this section shall take effect as of June 2, 1924', the date when the earlier act was passed. A reasonable interpretation is that the reduction and the tax operate alike on gifts after that date. Taking both statutes into account, and the principles of construction to which I have referred, I think it tolerably plain that the Act should be read as referring only to transactions taking place after it was passed, when to disregard the rule 'would be to impose an unexpected liability that if known might have induced those concerned to avoid it and to use their money in other ways.' *Lewellyn* v. *Frick*, 268 U. S. 232, 251, 252.

On the general question whether there is power to tax gifts I express no opinion now. I agree with the result that the plaintiff is entitled to recover the taxes paid in respect of gifts made before the statute went into effect.

Mr. Justice Brandeis, Mr. Justice Sanford and Mr. Justice Stone concur in this opinion.